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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,705	11/09/2000	Francisco J. Romero	10002676-1	4633

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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

LUU, LE HIEN

ART UNIT PAPER NUMBER

2141

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

DEC 14 2005

Technology Center 2100

Application Number: 09/709,705
Filing Date: November 09, 2000
Appellant(s): ROMERO ET AL.

Gregory W. Osterloth
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 09/29/2005 appealing from the Office action mailed on 04/19/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,516,350	Lumelsky et al.	02/2003
6,230,200	Forecast et al.	05/2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-31 are presented for examination.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-31 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lumelsky et al. (Lumelsky) patent no. 6,516,350., in view of Forecast et al. (Forecast) patent no. 6,230,200.

4. As to claim 1, Lumelsky teaches the invention substantially as claimed, including a method to automatically activate a reserve resource, comprising:

monitoring a load on a number of active resources (col. 8 lines 48-60);

comparing said load to a threshold specified in a resource usage policy (col. 9 line 31 – col. 10 line 44); and

automatically activating said reserve resource when dictated by said resource usage policy (col. 8 line 48 – col. 10 line 44).

However, Lumelsky does not explicitly teach said reserve resource is hardware component.

Forest teaches one or more of stream servers are kept in a standby mode, and they are being used as hot spares for any one of the other stream servers that fails to acknowledge commands from controller servers (col. 9 lines 6-36).

It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of Lumelsky and Forecast to activate said standby stream servers that inherently include hardware components such as processor and memory when said other stream servers fails to timely acknowledge commands because it would improve system performance.

5. As to claim 2, Lumelsky and Forecast teach updating said resource usage policy after said reserve hardware component is activated (Lumelsky, col. 11 line 48 – col. 12 line 25; Forecast, col. 9 lines 6-36).

6. As to claim 3, Lumelsky and Forecast teach balancing said load among said

Art Unit: 2141

number of active resources and said activated reserve hardware component (Lumelsky, col. 10 lines 17-44; col. 11 line 48 – col. 12 line 25; Forecast, col. 9 lines 6-36).

7. As to claim 4, Lumelsky and Forecast teach monitoring a combined load on said number of active resources and said activated reserve hardware component; comparing said combined load to a second threshold specified in a second resource usage policy; deactivating a resource selected from said number of active hardware component and said activated reserve hardware component when dictated by said second resource usage policy; and indicating that said selected hardware component is deactivated (Lumelsky, col. 8 line 61 – col. 9 line 14; col. 11 lines 30-46; Forecast, col. 9 lines 6-36).

8. As to claim 5, Lumelsky teaches signaling an event manager based on said monitored load as dictated by said resource usage policy (col. 11 line 64 – col. 12 line 25).

9. As to claims 6-8, Lumelsky and Forecast teach said resource usage policy dictates activating said reserve hardware component when said monitored load exceeds said threshold for a predetermined occurrence; when said monitored load exceeds said threshold for a period of time; or when said threshold is met, and wherein said resource usage policy dictates activating said reserve hardware component when a response to said number of alarms is not received (Lumelsky, col. 10 line 66 – col. 12

line 25; col. 13 line 66 – col. 14 line 9; Forecast, col. 9 lines 6-36).

10. As to claim 9, Lumelsky and Forecast teach updating a configuration profile to include said activated reserve hardware component, said update being made in response to said indication that said reserve hardware component is activated (Lumelsky, col. 10 line 66 - col. 11 line 9; Forecast, col. 9 lines 6-36).

11. As to claim 10, Lumelsky and Forecast teach charging a user of said activated reserve hardware component a fee, said charge being made in response to said indication that said reserve component is activated (Lumelsky, col. 12 line 65 – col. 13 line 20; Forecast, col. 9 lines 6-36).

12. As to claims 22-23, Forecast teaches said reserve hardware component comprises activating a reserve processor, and wherein said reserve processor is an component of an active server resource (Forecast, col. 9 lines 6-36. Forecast teaches activating a standby server and its hardware components which inherently include processor resource).

13. As to claims 24-25, Forecast teaches said reserve hardware component comprises activating a reserve memory, and wherein said reserve memory is an component of an active server resource (Forecast, col. 9 lines 6-36. Forecast teaches activating a standby server and its hardware components which inherently include

memory resource).

14. As to claim 26, Lumelsky teaches the threshold specified in said resource usage policy is a rate of active resource consumption (col. 12 lines 26-52).

15. Claims 11-21 and 27-31 have similar limitations as claims 1-10 and 22-26; therefore, they are rejected under the same rationale.

(10) Response to Argument

(I) As to group I, Applicants' arguments related to limitations in claim 1.

(I-a) Applicants argued that prior art does not teach automatic activation of a reserve hardware component when dictated by resource usage policy.

As to point (I-a), Lumelsky teaches automatically activating reserve resource when dictated by resource usage policy (Lumelsky, col. 8 line 48 – col. 10 line 44, Lumelsky teaches Service Control Plan (SCP) dynamically enables borrowing of under used resources from servers (113 and 114) for increasing the resources of server (111) based on criteria defined in policies employed by the SCP).

However, Lumelsky does not explicitly teach said reserve resource is hardware component.

Forest teaches one or more of stream servers are kept in a standby mode, and they are being used as hot spares for any one of the other stream servers

that fails to acknowledge commands from controller servers (Forest, col. 9 lines 6-36).

It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of Lumelsky and Forecast to activate said standby stream servers that inherently include hardware components such as processor and memory when said other stream servers fails to timely acknowledge commands because it would improve system performance.

(I-b) Applicants argued that there would not have been any motivation for one of ordinary skill in the art to combine Lumelsky's and Forecast's teachings at the time of appellants' invention.

As to point (I-b), in rejecting claim 1, Examiner stated that Lumelsky teaches the invention substantially as claimed, including a method to automatically activate a reserve resource, comprising:

monitoring a load on a number of active resources (col. 8 lines 48-60);

comparing said load to a threshold specified in a resource usage policy (col. 9 line 31 – col. 10 line 44); and

automatically activating said reserve resource when dictated by said resource usage policy (col. 8 line 48 – col. 10 line 44).

However, Lumelsky does not explicitly teach said reserve resource is hardware component.

Forest teaches one or more of stream servers are kept in a standby mode,

and they are being used as hot spares for any one of the other stream servers that fails to acknowledge commands from controller servers (col. 9 lines 6-36).

It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of Lumelsky and Forecast to activate said standby stream servers that inherently include hardware components such as processor and memory when said other stream servers fails to timely acknowledge commands because it would improve system performance.

Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Examiner stated that "It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of Lumelsky and Forecast to activate said standby stream servers that inherently include hardware components such as processor and memory when said other stream servers fails to timely acknowledge commands because it would improve system performance." The motivation is from Forecast's teachings in col. 1 lines 15-19.

(II) As to group II, Applicants' arguments related to limitations in claims 23, 25, 28, and 30.

(II-a) Applicants argued that prior art does not teach said reserve processor is a component of an active server resource.

As to point (II-a), Forecast teaches said reserve processor is an component of an active server resource (Forecast, col. 9 lines 6-36. Forecast teaches activating a standby server or making the standby server active, and then activating its hardware components which inherently include processor resource).

(III) As to group III, Applicants' arguments related to limitations in claims 26 and 31.

(III-a) Applicants argued that prior art does not teach the threshold specified in said resource usage policy is a rate of active resource consumption.

As to point (III-a), Examiner agrees with applicants' arguments. Therefore, Examiner withdraws rejection of claims 26 and 31. Claims 26 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(IV) As to group IV, Applicants' arguments related to limitations in claim 13.

(IV-a) Applicants argued that prior art does not teach the apparatus of claim 11 further comprising program code for selecting a reserve hardware component to activate based on a hierarchical resource deployment scheme.

Art Unit: 2141

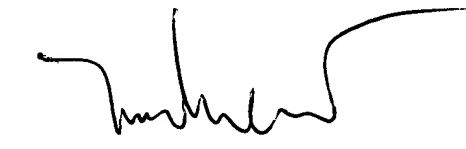
As to point (IV-a), Examiner agrees with applicants' arguments. Therefore, Examiner withdraws rejection of claim 13. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(11) Related Proceeding(s) Appendix

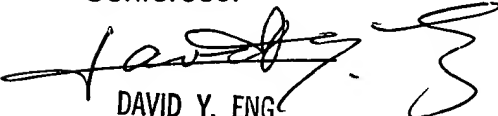
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


LE HIEN LUU
PRIMARY EXAMINER

Conferees:


DAVID Y. ENG
PRIMARY EXAMINER
RUPAL DHARIA
SUPERVISORY PATENT EXAMINER

HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400